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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9747-HII(2)-2020/4868.—In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 42/2019, dated 08.02.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

BANSI LAL CHAUHAN, HOUSE NO. 3568, NEAR VALMIKI TEMPLE, POLICE STATION ROAD, MALOYA COLONY, CHANDIGARH-160025 (Workman).

AND

1. AANCHAL INTERNATIONAL SCHOOL, SCO NO. 92-93-94, SECTOR 41-D, CHANDIGARH THROUGH ITS PRINCIPAL

2. AANCHAL INTERNATIONAL SCHOOL, SECTOR 41-D, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

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JATINDER KUMAR
Date: 2020.03.19
12:26:30 (IST)
Reason: Published
Location:

2. Case of the workman in nutshell is that he was appointed as Night Watchman-cum-Peon in the establishment of the management with effect from 01.04.2005. On 23.08.2018, the management refused work to the workman without issuing any notice in violation of provisions of Section 25-F of the ID Act.

(463)

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<https://egazette.chd.gov.in>*

3. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

"In view of the notification as well as latest citation of the Hon'ble High Court, I may kindly be allowed to withdraw the present industrial dispute with the liberty to file a fresh one before the Hon'ble Education Tribunal, Union Territory Chandigarh."

Accordingly, the present industrial dispute is disposed off as withdrawn with a liberty to file a fresh before the Education Tribunal, Union Territory Chandigarh. Appropriate Government be informed. File be consigned to the record room.

(Sd.) ,

(ANSHUL BERRY),

The 08.02.2020.

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB 0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9394-HII(2)-2020/4866.—In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 66/2017, dated 30.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

PRESIDENT / GENERAL SECRETARY, HOTEL WORKERS' UNION (REGD. 550), R/O HOUSE NO. 345, SECTOR 21-A, CHANDIGARH (Workers' Union)

AND

MANAGING DIRECTOR, CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LIMITED, S.C.O. NO. 121-122, SECTOR 17-B, CHANDIGARH. (Management) referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9394-HII(2)-2017/8441, dated 22.08.2017.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9394-HII(2)-2017/8441, dated 22.08.2017/23.08.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the demand raised in the demand notice dated 20.01.2017 by The President/ General Secretary of the Hotel Workers Union (Regd. 550), R/o House No. 345, Sector 21-A, Chandigarh (Affiliated to AITUC) And (1) The Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited, SCO No. 121-122, Sector 17-B, Chandigarh, are genuine and justified. If so, to what effect and to what relief the union/workers are entitled to, if any ?"

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<https://egazette.chd.gov.in>*

2. The President/General Secretary, Hotel Workers Union (hereinafter called "workers' union") had served demand notice dated 20.01.2017 in respect of Shri Anil Kumar Grover - Telephone Operator (hereinafter called "workman") upon the Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited (hereinafter called "management") under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called "ID Act"). Upon notice, the workers' union appeared through its representative. Statement of claim was filed. Case of the worker's union in brief is that the workman is a regular member of the workers' union. He has been working in Chandigarh Industrial & Tourism Development Corporation (hereinafter called "CITCO") since 20.12.1989 as a permanent employee of the CITCO. He was issued memorandum No. Persnl/EA-III/23365, dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the Corporation by showing lesser amount of booking and thus have caused financial loss to Corporation and siphoned the amount as well as hampering of the working of DVR system. At the time of issuance of memorandum the workman was working as Telephone Operator at Chef-17, CITCO, Chandigarh. Before issuing memorandum, the workman was placed under suspension *vide* letter dated 16.12.2014. The workman replied the memorandum *vide* letter dated 05.01.2015 and denied the alleged charges and made his position clear viz a viz the alleged charges. The charge sheet was not based on facts. The alleged charges were based on the complaint of one Shri Akhilesh Chander-Sub Editor, Indian Police Action (National Monthly Magazine). He had made a complaint after one week of check-out as Receptionist refused to keep his bags after his checking out from lodge. He did not make any complaint against the working of the transit lodge during his stay in the lodge, which clearly shows the motivation of the complainant. In the complaint Shri Akhilesh Chander had showed his good and bad experience such as under :—

- i. In the lodge smoking is an offence but the drinking is allowed.
- ii. In the bath room there is no stool because of that person can slip over there.
- iii. You have near about twenty beds in hall, but the mobile charging points are two or three. Every person has mobile today and he has to charge.

After receiving the complaint from Shri Akhilesh Chander, on 15.12.2014, the Managing Director directed Shri Rajneesh Dewan - Senior Manager (Finance) to inspect the Transit Lodge. Sh. Rajneesh Diwan inspected the Transit lodge on the back of the workman. The Corporation did not inform the workman that his reply to the alleged charges is not found to be satisfactory. The corporation without any justified reason hastily appointed one Sh. R. L. Mehta-IAS (Retired) as Inquiry Officer to enquire in to the charges. The Corporation produced four state witnesses in the inquiry whereas the workman himself appeared in the inquiry. The Inquiry Officer Shri R. L. Mehta-IAS (Retired) was a biased person so the workman *vide* his letter dated 13.04.2015 requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The Corporation *vides* its letter No. Persnl/EA-III/4407, dated 26.05.2015 informs the workman that his request for change of Inquiry Officer has been considered and not acceded to. No reason of rejection of appeal was given. The Corporation informed the workman *vide* letter No. P&A/A-I/205 dated 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officer. Sh. R.L. Mehta has joined service somewhere so he left the inquiry. In his place Shri H. R. Ganger - IAS (Retired) was appointed as Inquiry Officer. The Inquiry Officer Shri H. R. Ganger is a biased person. He has always proved the charge against the employees even by exceeding his jurisdiction. He has wrongly proved the alleged charges against the workman. The inquiry was full of defects on the grounds that no state witness had said anything on the alleged charges and no state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgments of Hon'ble High Courts and Supreme Court referred to by the workman during inquiry, which is otherwise criminal contempt of Court. The inspection by Shri Rajneesh Dewan - Senior Manager (Finance) was carried out on the back of the workman. The CCTC footage and copies of lesser amount of booking were not shown to the workman. The DVR system was working on 15.12.2014 and 16.12.2014. The workman was placed under suspension on 16.12.2014. The workman cannot be held responsible about the non working of DVR system after 17.12.2014. No State witness has stated that the workman had siphoned the amount and had caused loss

to Corporation, the workman had hampered the working of DVR system, allotment of beds to customers was the duty of the workman, the workman had not performed his duties in the interest of Corporation and no state witness has stated or produced any document to prove that the workman had worked fraudulently with dishonest intension and had concealed the facts from the department. The inquiry was not fair and proper and was full of defects. The punishing authority vide letter No. Persnl/EA-III/243 dated 23.12.2015 awarded the punishment of stoppage of two increments with cumulative effect upon the workman. The suspension period from 16.12.2014 to 29.05.2015 treated as leave of the kind due. The workman made an appeal dated 25.01.2016 before the appellat authority against the award of punishing authority. The appellat authority did not pass any speaking order and dismiss the appeal *vide* order No. Persnl/EA-III/27267, dated 10.03.2016. The punishment of stoppage of two increment with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 to be treated as leave of the kind due is illegal, wrongful, motivated, unjustified and against the principles of natural justice. Ultimately, it is prayed that office order No. P&A/P-I/415 dated 23.12.2015 of the Managing Director of the management *vide* which stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of the kind due be declared as illegal, wrongful and unjustified and office order No. P&A/P-I/415, dated 23.12.2015 be set aside.

3. The management contested the case of the workers' union and filed written statement raising preliminary objection that the workman while working as Telephone Operator at Transit Lodge (A Unit of CITCO), Sector 17, Bus Stand, Chandigarh indulged himself in a serious illegal activities detrimental to the interest of Corporation by showing lesser amount of booking and this have caused financial loss to the Corporation and siphoned the amount which otherwise should have been income of Corporation as well as tampering of the working of the DVR system as the hard disk attached to it was not found working at the time of retrieval of data, for which he was charge sheeted vide charge sheet dated 08.01.2015. The workman filed his reply to the charge sheet on 29.01.2015 which was considered and found unsatisfactory by the disciplinary authority. In order to ascertain the truth, Inquiry Officer Shri R. L. Mehta - IAS (Retired) was appointed on 16.02.2015 to enquire into the charges framed against the workman. Later on as per the order dated 29.07.2015 of Chandigarh Administration the name of Shri R. L. Mehta was deleted from the list of Inquiry Officers and as such the enquiry was withdrawn from him. After that Shri H. R. Gangar - IAS (Retired) was appointed as Inquiry Officer on 20.08.2015 who after conducting fair and proper inquiry into the matter giving full opportunity to the workman submitting his inquiry report on 06.10.2015 to the disciplinary authority wherein the Inquiry Officer came to the conclusion that the charge levelled against the workman are correct and proved. The disciplinary authority after going through the facts, record produced in the enquiry, issued show cause notice and also sent a copy of the inquiry report to the workman on 23.10.2015 for furnishing his reply. The workman submitted his reply on 05.11.2015 and he was also given opportunity of personal hearing on 11.12.2015 by the disciplinary authority. During personal hearing the workman was shown an office order dated 25.02.2009 by CITCO whereby the standing instructions had been issued to the effect that the charge of transit lodge was also be given to supervisor. The workman was also showed the copies of leave application signed and forwarded by him, on being questioned as to why he has signed/forwarded these documents to the head office, the workman could not give any satisfactory reply. The disciplinary authority after gone through the facts and circumstances of the case and submission made by the workman awarded the punishment of stoppage to two increments with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 be treated as leave of kind due. The action of the disciplinary authority in awarding punishment is legal, just, fair and proper and in accordance with the law/rules applicable to the employees of the Corporation. No principle of natural justice has been violated. The workman aggrieved by the order dated 23.12.2015 filed an appeal on 25.01.2016 before the appellate authority. The appellate authority after going through the appeal, relevant documents, submission made by the workman during his personal hearing on 23.02.2016 and applying his mind came to the conclusion that the appeal filed by the workman is devoid of merits and deserves to be dismissed. Accordingly the appeal of the workman was dismissed. The action of the appellate authority while dismissing the appeal is legal, just, fair and proper and in accordance with law/rules. On merits, it is pleaded that the workman was issued charge sheet on 08.01.2015. The workman had filed reply to the charge sheet on

05.01.2015. The management had conducted the inquiry. The workman had written a letter for the change of the Inquiry Officer and the management had replied the same on 26.05.2015 and informed him about the decision. The workman had filed an appeal before the appellate authority and the appellate authority had dismissed the appeal on 10.03.2016. Ultimately, it is prayed that the claim of the workers' union be dismissed.

4. The workers' union filed replication reiterating the averments of its case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 20.01.2017 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union / workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, the management examined Smt. Pushp Lata Kaushal - Senior Assistant (P&A Branch) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 :

7. Onus to prove this issue was on the workers' union and in order to prove this issue the workers' union examined the workman as AW1, who deposed that the Hotel Workers Union, Chandigarh is registered trade union and he is regular member of the union. He has been working in the CITCO since 20.12.1989 as permanent employee of the CITCO. He was issued memorandum dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and has caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. He replied the memorandum dated 05.01.2015 and denied the alleged charges. The charge sheet was not based on facts rather on complaints of Shri Akhilesh Chander - Sub-Editor, Indian Police Action (National Monthly Magazine). After receiving the complaint the Managing Director directed Shri Rajesh Dhiman - Senior Manager to inspect the transit lodge. He was not associated in the inspection. The corporation without any justified reason appointed the Inquiry Officer Shri R. L. Mehta - IAS (Retired) to enquire into the charges and corporation produced four witnesses in the inquiry. He further deposed that he requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The corporation informed him on 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officers as he had joined the services somewhere and in his place Shri H. R. Ganger - IAS (Retired) was appointed as Inquiry Officer, who is biased person. He further deposed that the inquiry is full of defects as no state witness had said anything on the alleged charge. No state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgements of Hon'ble High Court and Supreme Court referred by him. The inspection by Shri Rajneesh Dewan - Senior Manager (Finance) was carried out on his back. The CCTV footage and copies of lesser amount of booking were not shown to him. DVR system was working on 15.12.2016 and 16.12.2014. He was placed under suspension on 16.12.2014. No witness has stated that he had siphoned the amount and caused loss to the corporation and hampered the working of DVR system. Further, no witness has stated that allotment of beds to customer was his duty and had not performed his duties in the interest of corporation. No witness has been produced to prove that he had fraudulently with dishonest intension and had concealed the facts. The inquiry was not fair & proper and was full of defects and punishment order of stoppage of two increments with cumulative effect is wrong and illegal. He made an appeal before the appellate authority. The appellate authority also did not passed any speaking order and dismissed the appeal.

8. Learned representative for the workers' union has argued that the workman is a regular member of the union and was working as Restaurant Executive. He has been falsely charge sheeted. The charge sheet is not based on facts. The Inquiry Officer has conducted the biased inquiry and wrongly proved the charges against him. There is no evidence on file to prove the charges against him. The inquiry is full of defects. The workman was placed under suspension on 16.12.2014 and DVS system was working on 15.12.2014 and 16.12.2014. He argued that the punishment of stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of kind due is illegal, wrong, motivated, unjustified and against the principles of natural justice. He prayed for allowing of the reference and for setting aside the punishment orders.

9. On the other hand, learned representative for the management has examined Smt. Pushp Lata Kaushal - Senior Assistant, P&A Branch as MW1 Senior Assistant, who proved the authority letter as Exhibit 'R1' and deposed that reference raised by the claimant is not maintainable. The workman while working as Restaurant Executive indulged himself in serious illegal activities. A complaint was received on email from one Shri Akhilesh Chandra in which the irregularities were pointed out and the Senior Manager gave his report that CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly. Inspection report is Exhibit 'R2' to 'R3'. As per report of the officials of Cyber Soft on 17.12.2014 the DVR system was not found in working condition and the workman was found on duty who knowingly in order to avoid the copying of recording had hampered the DVR system. The workman was charge sheeted for showing lesser booking as well as hampering the working of DVR system. Copy of charge sheet is Exhibit 'R6' and copy of inquiry report is Exhibit 'R7' and copy of punishing order is Exhibit 'R8'. The appellate authority also dismissed the appeal of the workman. Copy of the appellate authority is Exhibit 'R9'.

10. Learned representative for the management has argued that the workman while working at Transit Lodge, Bus Stand, Sector 17, Chandigarh indulged himself in serious illegal activities detrimental to the interest of the corporation by showing less amount of booking as well as hampering the working of DVR system for which he was charge sheeted. His reply to the charge sheet was considered and found unsatisfactory as such to enquire into the charges, a departmental inquiry was ordered against the workman, wherein the charges were duly proved against the workman. Thereafter he was served with a show cause notice and copy of inquiry report was sent to the workman for making representation thereto. The workman was also given opportunity of personal hearing. The disciplinary authority after going into the facts & circumstances of the case awarded punishment of stoppage of two increments with cumulative effect and treated his suspension period as leave of kind due. He prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that the workman was working as Telephone Operator with the CITCO since 20.12.1989. It is also not disputed that he was issued memorandum No.Persnl/EA-III/23365, dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. Now the grudge of the workman is that the charge sheet was not based on facts and only on the complaint of Shri Akhilesh Chander - Sub-Editor but as per the averments of the management that a complaint dated 13.12.2014 was received in the office of Managing Director, CITCO from Shri Akhilesh Chandra pointing out irregularities going on in Transit Lodge (A unit of CITCO), Sector 17, Bus Stand, Chandigarh. In order to ascertain the facts of the complaint, Senior Manager (Finance) was directed to carry out inspection, who gave his report on 15.12.2014 by stating that the CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly and found that on 08.12.2014 as per arrival register, the occupancy was shown lesser than the occupancy as per CCTV footage. The CITCO is also got the DVR system and hard driver checked from the Cybersoft, Chandigarh and the report was given that the CCTV footage and back up video clips of certain period could not be copied in USB drive in the absence of password and certain device and it was also informed that the team on 16.12.2014 left the DVR in working condition but on 17.12.2014 when Shri Vikas along with the team came to transit lodge the

DVR server cable was unplugged and when the DVR was put to use it was creating problem and was not functioning properly. As per evidence on record on 18.12.2014 a committee was constituted to procure the backup of CCTV footage of relevant data of transit lodge, the DVR system was non-functional. The system was got checked from M/s Dass Infotech, who opined that the hard disk had crashed or had bad sectors. Later on hard disk was checked from SPIC and it was reported that the hard disk attached to DVR was not in working condition. As per attendance register the workman had performed his duty on 16.12.2014. From the above it is clear that the workman had indulged in tampering the working of the DVR system knowingly in order to avoid copying of recording. The workman was charge sheeted and he filed reply on 05.01.2015. His reply was found unsatisfactory. This fact was admitted by the workman in his cross-examination before this Court that it is correct that he was charge sheeted on 29.01.2015 and he filed reply of the said charge sheet. He further admitted that it is also correct that he joined the inquiry and he also engaged defence assistant to assist him in the inquiry. He admitted that it is correct that show cause notice was issued to him on 23.10.2015 along with copy of inquiry report to which he replied and he was punished after considering the reply by the punishing authority. He stated that he made an appeal against the order of punishment authority to the appellate authority his appeal was dismissed and he was given personal hearing on 23.02.2015 by the appellate authority before deciding the appeal. In this manner the workman had admitted whole case of the management and clearly admitted that he has been given opportunity of personal hearing by the punishment authority before awarding the punishment. The management had already proved on record complaint of Shri Akhilesh Chandra received *vide* email dated 13.12.2014 Exhibit 'R2'; inspection report of the transit lodge by the Senior Manager (Finance) Exhibit 'R3'; report regarding DVR system by M/s Cybersoft Exhibit 'R4'; report of the Society for Promotion of Information Technology (SPIC) regarding DVR system Exhibit 'R5'; memorandum whereby the workman was charge sheeted Exhibit 'R6'; inquiry report Exhibit 'R7'; punishment order passed against the workman Exhibit 'R8' and order of the appellate authority Exhibit 'R9'. As per inquiry file Shri R. L. Mehta was appointed as Inquiry Officer and Shri Raman Kumar-Manager (Sales Depot) was appointed as Presenting Officer. From the oral as well as the documentary evidence led by the parties, it has proved on record that a fair & proper inquiry has been held by the management before passing the punishment order. Accordingly, this issue is decided against the workers' union.

RELIEF :

12. In the light of findings on the issue above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

The 30.01.2020.

(Sd.) ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB 0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9392-HII(2)-2020/4864.— In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned

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PRESIDENT / GENERAL SECRETARY, HOTEL WORKERS' UNION (REGD. 550), R/O HOUSE NO. 345, SECTOR 21-A, CHANDIGARH (Workers' Union)

AND

MANAGING DIRECTOR, CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LIMITED, S.C.O. NO. 121-122, SECTOR 17-B, CHANDIGARH. (Management) referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9392-HII(2)-2017/8446, dated 22.08.2017.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9392-HII(2)-2017/8446, dated 22.08.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the demand raised in the demand notice dated 20.01.2017 by The President/General Secretary of the Hotel Workers Union (Regd. 550), R/o House No. 345, Sector 21-A, Chandigarh (Affiliated to AITUC) And (1) The Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited, SCO No.121-122, Sector 17-B, Chandigarh, are genuine and justified. If so, to what effect and to what relief the union / workers are entitled to, if any ?"

2. The President / General Secretary, Hotel Workers Union (hereinafter called "workers' union") had served demand notice dated 20.01.2017 in respect of Shri Tej Pal - Restaurant Executive (hereinafter called "workman") upon the Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited (hereinafter called "management") under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called "ID Act"). Upon notice, the workers' union appeared through its representative. Statement of claim was filed. Case of the worker's union in brief is that the workman is a regular member of the workers' union. He has been working in Chandigarh Industrial & Tourism Development Corporation (hereinafter called "CITCO") since 1982 as a permanent employee of the CITCO. He was issued memorandum No. Persnl/EA-III/23373, dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the Corporation by showing lesser amount of booking and thus have caused financial loss to Corporation and siphoned the amount as well as hampering of the working of DVR system. At the time of issuance of memorandum the workman was working as Restaurant Executive at Chef-17, CITCO, Chandigarh. Before issuing memorandum, the workman was placed under suspension *vide* letter dated 17.12.2014. The workman was on casual leave on 16.12.2014. Although the workman is designated as restaurant Executive but he has no administrative, managerial or supervisory duties to discharge. The workman replied the memorandum *vide* letter dated 29.01.2015 and denied the alleged charges and made his position clear viz a viz the alleged charges. The charge sheet was not based on facts. The alleged charges were based on the complaint of one Shri Akhilesh Chander - Sub Editor, Indian Police Action (National Monthly Magazine). He had made a complaint after one week of check-out as Receptionist refused to keep his bags after his checking out from lodge. He did not make any complaint against the working of the transit lodge during his stay in the lodge, which clearly shows the motivation of the complainant. In the complaint Shri Akhilesh Chander had showed his good and bad experience such as under:-

- i. In the lodge smoking is an offence but the drinking is allowed.
- ii. In the bath room there is no stool because of that person can slip over there.
- iii. You have near about twenty beds in hall, but the mobile charging points are two or three. Every person has mobile today and he has to charge.

After receiving the complaint from Sh. Akhilesh Chander, on 15.12.2014, the Managing Director directed Shri Rajneesh Dewan - Senior Manager (Finance) to inspect the Transit Lodge. Sh. Rajneesh Diwan inspected

the Transit lodge on the back of the workman. The Corporation did not inform the workman that his reply to the alleged charges is not found to be satisfactory. The corporation without any justified reason hastily appointed one Sh. R. L. Mehta - IAS (Retired) as Inquiry Officer to enquire in to the charges. The Corporation produced four state witnesses in the inquiry whereas the workman himself appeared in the inquiry. Shri P. S. Sandhu was deployed at Transit Lodge *vide* letter No. Persnl/EA-II/389, dated 04.03.2013 as Manager (F&B) and the workman was transferred from Petrol Station Sector 9 to Chef-17 through same letter. The perusal of the said letter clearly shows that the workman was not assigned and duty to look after the affairs of Transit Lodge. The Inquiry Officer Shri R. L. Mehta - IAS (Retired) was a biased person so the workman *vide* his letter dated 13.04.2015 requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The Corporation *vides* its letter No. Persnl/EA-III/4407, dated 26.05.2015 informs the workman that his request for change of Inquiry Officer has been considered and not acceded to. No reason of rejection of appeal was given. The Corporation informed the workman *vide* letter No. P&A/A-I/205, dated 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officer. Sh. R.L. Mehta has joined service somewhere so he left the inquiry. In his place Shri H. R. Ganger - IAS (Retired) was appointed as Inquiry Officer. The Inquiry Officer Shri H. R. Ganger is a biased person. He has always proved the charge against the employees even by exceeding his jurisdiction. He has wrongly proved the alleged charges against the workman. The inquiry was full of defects on the grounds that no state witness had said anything on the alleged charges and no state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgments of Hon'ble High Courts and Supreme Court referred to by the workman during inquiry, which is otherwise criminal contempt of Court. The inspection by Shri Rajneesh Dewan - Senior Manager (Finance) was carried out on the back of the workman. The CCTC footage and copies of lesser amount of booking were not shown to the workman. The DVR system was working on 15.12.2014 and 16.12.2014. The workman was placed under suspension on 16.12.2014. The workman cannot be held responsible about the non working of DVR system after 17.12.2014. No State witness has stated that the workman had siphoned the amount and had caused loss to Corporation, the workman had hampered the working of DVR system, allotment of beds to customers was the duty of the workman, the workman had not performed his duties in the interest of Corporation and no state witness has stated or produced any document to prove that the workman had worked fraudulently with dishonest intension and had concealed the facts from the department. The inquiry was not fair and proper and was full of defects. The punishing authority *vides* letter No. Persnl/EA-III/244, dated 23.12.2015 awarded the punishment of stoppage of two increments with cumulative effect upon the workman. The suspension period from 16.12.2014 to 29.05.2015 treated as leave of the kind due. The workman made an appeal dated 25.01.2016 before the appellant authority against the award of punishing authority. The appellant authority did not pass any speaking order and dismiss the appeal *vide* order No. Persnl/EA-III/27267, dated 10.03.2016. The punishment of stoppage of two increment with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 to be treated as leave of the kind due is illegal, wrongful, motivated, unjustified and against the principles of natural justice. Ultimately, it is prayed that officer order No. Persnl/EA-III/244, dated 23.12.2015 of the Managing Director of the management *vide* which stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of the kind due be declared as illegal, wrongful and unjustified and office order No. Persnl/EA-III/244, dated 23.12.2015 be set aside.

3. The management contested the case of the workers' union and filed written statement raising preliminary objection that the workman while working as Restaurant Executive at Transit Lodge (A Unit of CITCO), Sector 17, Bus Stand, Chandigarh indulged himself in a serious illegal activities detrimental to the interest of Corporation by showing lesser amount of booking and this have caused financial loss to the Corporation and siphoned the amount which otherwise should have been income of Corporation as well as tampering of the working of the DVR system as the hard disk attached to it was not found working at the time of retrieval of data, for which he was charge sheeted *vide* charge sheet dated 08.01.2015. The workman filed his reply to the charge sheet on 29.01.2015 which was considered and found unsatisfactory by the disciplinary authority. In order to ascertain the truth, Inquiry Officer Shri R. L. Mehta - IAS (Retired) was appointed on

16.02.2015 to enquire into the charges framed against the workman. Later on as per the order dated 29.07.2015 of Chandigarh Administration the name of Shri R. L. Mehta was deleted from the list of Inquiry Officers and as such the enquiry was withdrawn from him. After that Shri H. R. Gangar - IAS (Retired) was appointed as Inquiry Officer on 20.08.2015 who after conducting fair and proper inquiry into the matter giving full opportunity to the workman submitting his inquiry report on 06.10.2015 to the disciplinary authority wherein the Inquiry Officer came to the conclusion that the charge levelled against the workman are correct and proved. The disciplinary authority after going through the facts, record produced in the enquiry, issued show cause notice and also sent a copy of the inquiry report to the workman on 23.10.2015 for furnishing his reply. The workman submitted his reply on 05.11.2015 and he was also given opportunity of personal hearing on 11.12.2015 by the disciplinary authority. During personal hearing the workman was shown an office order dated 25.02.2009 by CITCO whereby the standing instructions had been issued to the effect that the charge of transit lodge was also be given to supervisor. The workman was also showed the copies of leave application signed and forwarded by him, on being questioned as to why he has signed/forwarded these documents to the head office, the workman could not give any satisfactory reply. The disciplinary authority after gone through the facts and circumstances of the case and submission made by the workman awarded the punishment of stoppage to two increments with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 be treated as leave of kind due. The action of the disciplinary authority in awarding punishment is legal, just, fair and proper and in accordance with the law/rules applicable to the employees of the Corporation. No principle of natural justice has been violated. The workman aggrieved by the order dated 23.12.2015 filed an appeal on 25.01.2016 before the appellate authority. The appellate authority after going through the appeal, relevant documents, submission made by the workman during his personal hearing on 23.02.2016 and applying his mind came to the conclusion that the appeal filed by the workman is devoid of merits and deserves to be dismissed. Accordingly the appeal of the workman was dismissed. The action of the appellate authority while dismissing the appeal is legal, just, fair and proper and in accordance with law/rules. On merits, it is pleaded that the workman was issued charge sheet on 08.01.2015 and he was placed under suspension on 17.12.2014. The workman had filed reply to the charge sheet on 29.01.2015. The management had conducted the inquiry. The workman had written a letter for the change of the Inquiry Officer and the management had replied the same on 26.05.2015 and informed him about the decision. The workman had filed an appeal before the appellate authority and the appellate authority had dismissed the appeal on 10.03.2016. Ultimately, it is prayed that the claim of the workers' union be dismissed.

4. The workers' union filed replication reiterating the averments of its case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 20.01.2017 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union / workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, the management examined Smt. Pushp Lata Kaushal - Senior Assistant (P&A Branch) as MW1. Learned representative for the management tendered into evidence documents and closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

ISSUE NO. 1 :

7. Onus to prove this issue was on the workers' union and in order to prove this issue the workers' union examined the workman as AW1, who deposed that the Hotel Workers Union, Chandigarh is registered trade union and he is regular member of the union. He has been working in the CITCO since 1982 as

permanent employee of the CITCO. He had retired from service in November 2016 due to superannuation. He was issued memorandum dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and has caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. Before the issuance of memorandum he was placed under suspension *vide* letter dated 17.12.2014. He replied the memorandum dated 29.01.2015 and denied the alleged charges. The charge sheet was not based on facts rather on complaints of Shri Akhilesh Chander - Sub-Editor, Indian Police Action (National Monthly Magazine). After receiving the complaint the Managing Director directed Shri Rajesh Dhiman - Senior Manager to inspect the transit lodge. He was not associated in the inspection. The corporation without any justified reason appointed the Inquiry Officer Shri R. L. Mehta - IAS (Retired) to enquire into the charges and corporation produced four witnesses in the inquiry. He further deposed that he requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The corporation informed him on 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officers as he had joined the services somewhere and in his place Shri H. R. Ganger - IAS (Retired) was appointed as Inquiry Officer, who is biased person. He further deposed that the inquiry is full of defects as no state witness had said anything of the alleged charge. No state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgements of Hon'ble High Court and Supreme Court referred by him. The inspection by Shri Rajneesh Dewan - Senior Manager (Finance) was carried out on his back. The CCTV footage and copies of lesser amount of booking were not shown to him. DVR system was working on 15.12.2016 and 16.12.2014. He was placed under suspension on 16.12.2014. No witness has stated that he had siphoned the amount and caused loss to the corporation and hampered the working of DVR system. Further, no witness has stated that allotment of beds to customer was his duty and had not performed his duties in the interest of corporation. No witness has been produced to prove that he had fraudulently with dishonest intention and had concealed the facts. The inquiry was not fair & proper and was full of defects and punishment order of stoppage of two increments with cumulative effect is wrong and illegal. He made an appeal before the appellate authority. The appellate authority also did not passed any speaking order and dismissed the appeal.

8. Learned representative for the workers' union has argued that the workman is a regular member of the union and was working as Restaurant Executive. He has been falsely charge sheeted. The charge sheet is not based on facts. The Inquiry Officer has conducted the biased inquiry and wrongly proved the charges against him. There is no evidence on file to prove the charges against him. The inquiry is full of defects. The workman was placed under suspension on 16.12.2014 and DVS system was working on 15.12.2014 and 16.12.2014. He argued that the punishment of stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of kind due is illegal, wrong, motivated, unjustified and against the principles of natural justice. He prayed for allowing of the reference and for setting aside the punishment orders.

9. On the other hand, learned representative for the management has examined Smt. Pushp Lata Kaushal - Senior Assistant, P&A Branch as MW1 Senior Assistant, who proved the authority letter as Exhibit 'R1' and deposed that reference raised by the claimant is not maintainable. The workman while working as Restaurant Executive indulged himself in serious illegal activities. A complaint was received on email from one Shri Akhilesh Chandra in which the irregularities were pointed out and the Senior Manager gave his report that CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly. Inspection report is Exhibit 'R2' to 'R3'. As per report of the officials of Cyber Soft on 17.12.2014 the DVR system was not found in working condition and the workman was found on duty who knowingly in order to avoid the copying of recording had hampered the DVR system. The workman was charge sheeted for showing lesser booking as well as hampering the working of DVR system. Copy of charge sheet is Exhibit 'R6' and copy of inquiry report is Exhibit 'R7' and copy of punishing order is Exhibit 'R8'. The appellate authority also dismissed the appeal of the workman. Copy of the appellate authority is Exhibit 'R9'.

10. Learned representative for the management has argued that the workman while working at Transit Lodge, Bus Stand, Sector 17, Chandigarh indulged himself in serious illegal activities detrimental to the interest of the corporation by showing less amount of booking as well as hampering the working of DVR system for which he was charge sheeted. His reply to the charge sheet was considered and found unsatisfactory as such the enquire into the charges, a departmental inquiry was ordered against the workman, wherein the charges were duly proved against the workman. Thereafter he was served with a show cause notice and copy of inquiry report was sent to the workman for making representation thereto. The workman was also given opportunity of personal hearing. The disciplinary authority after going into the facts & circumstances of the case awarded punishment of stoppage of two increments with cumulative effect and treated his suspension period as leave of kind due. He prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that the workman was working as Restaurant Executive with the CITCO since 1982. It is also not disputed that he was issued memorandum No.Persnl/EA-III/23373, dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. Now the grudge of the workman is that the charge sheet was not based on facts and only on the complaint of Shri Akhilesh Chander - Sub-Editor but as per the averments of the management that a complaint dated 13.12.2014 was received in the office of Managing Director, CITCO from Shri Akhilesh Chandra pointing out irregularities going on in Transit Lodge (A unit of CITCO), Sector 17, Bus Stand, Chandigarh. In order to ascertain the facts of the complaint, Senior Manager (Finance) was directed to carry out inspection, who gave his report on 15.12.2014 by stating that the CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly and found that on 08.12.2014 as per arrival register, the occupancy was shown lesser than the occupancy as per CCTV footage. The CITCO is also got the DVR system and hard driver checked from the Cybersoft, Chandigarh and the report was given that the CCTV footage and back up video clips of certain period could not be copies in USB drive in the absence of password and certain device and it was also informed that the team on 16.12.2014 left the DVR in working condition but on 17.12.2014 when Shri Vikas along with the team came to transit lodge the DVR server cable was unplug and when the DVR was put to use it was creating problem and was not functioning properly. As per evidence on record on 18.12.2014 a committee was constituted to procure the backup of CCTV footage of relevant data of transit lodge, the DVR system was non-functional. The system was got checked from M/s Dass Infotech, who opined that the hard disk had crashed or had bad sectors. Later on hard disk was checked from SPIC and it was reported that the hard disk attached to DVR was not in working condition. As per attendance register the workman had performed his duty on 16.12.2014. From the above it is clear that the workman had indulged in tampering the working of the DVR system knowingly in order to avoid copying of recording. The workman was charge sheeted and he filed replied on 29.01.2015. His reply was found unsatisfactory. This fact was admitted by the workman in his cross-examination before this Court that it is correct that he was charge sheeted on 08.01.2015 and he filed reply of the said charge sheet. He further admitted that it is also correct that on the said charge sheet an inquiry was conducted and he participated in the said inquiry along with his defence assistant. He stated that the inquiry was in connection with allotment of beds in the transits lodge, Bus Stand, Sector 17, Chandigarh. He admitted that the inquiry officer prove the charges against him and he remained suspended from 16.12.2014 to 29.05.2015 and on the basis of inquiry report the punishing authority awarded a punishment of stoppage of two increments with cumulative effect and the suspension period was treated as leave of the kind due. He further admitted that it is correct that he was given an opportunity of personal hearing by the punishing authority before awarding the punishment and after that the order of punishment was passed. He also admitted that he filed appeal before the appellate authority against the order of punishment authority and he was given personal hearing by the appellate authority and after that his appeal was dismissed by the appellate authority. In this manner the workman had admitted whole case of the management and clearly admitted that he has been given opportunity of personal hearing by the punishment authority before awarding the punishment. The management had already proved on record complaint of Shri Akhilesh Chandra

received *vide* email dated 13.12.2014 Exhibit 'R2'; inspection report of the transit lodge by the Senior Manager (Finance) Exhibit 'R3'; report regarding DVR system by M/s Cybersoft Exhibit 'R4'; report of the Society for Promotion of Information Technology (SPIC) regarding DVR system Exhibit 'R5'; memorandum whereby the workman was charge sheeted Exhibit 'R6'; inquiry report Exhibit 'R7'; punishment order passed against the workman Exhibit 'R8' and order of the appellate authority Exhibit 'R9'. As per inquiry file Shri R.. L. Mehta was appointed as Inquiry Officer and Shri Raman Kumar - Manager (Sales Depot) was appointed as Presenting Officer. From the oral as well as the documentary evidence led by the parties, it has proved on record that a fair & proper inquiry has been held by the management before passing the punishment order. Accordingly, this issue is decided against the workers' union.

RELIEF :

12. In the light of findings on the issues above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.) ,

(ANSHUL BERRY),

The 30.01.2020.

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB 0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9399-HII(2)-2020/4862.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR (PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 87/2017, dated 30.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

PRESIDENT/GENERAL SECRETARY, HOTEL WORKERS' UNION (REGD. 550),
R/O HOUSE NO. 345, SECTOR 21-A, CHANDIGARH (Workers' Union)

AND

MANAGING DIRECTOR, CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LIMITED, S.C.O. NO. 121-122, SECTOR 17-B, CHANDIGARH. (Management) referred to the said court by the Chandigarh Administration bearing Endorsement No. 13/1/9399-HII(2)-2017/11164, dated 10.10.2017.

AWARD

1. Below mentioned Reference bearing Endorsement No.13/1/9399-HII(2)-2017/11164, dated 10.10.2017 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

“Whether the demand raised in the demand notice dated 20.01.2017 by The President/General Secretary of the Hotel Workers Union (Regd. 550), R/o House No. 345, Sector 21-A, Chandigarh (Affiliated to AITUC) And (1) The Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited, SCO No. 121-122, Sector 17-B, Chandigarh, are genuine and justified. If so, to what effect and to what relief the union/workers are entitled to, if any ?”

2. The President/General Secretary, Hotel Workers Union (hereinafter called “workers’ union”) had served demand notice dated 20.01.2017 in respect of Shri Anil Kumar Pandey–Junior Assistant (hereinafter called “workman”) upon the Managing Director, Chandigarh Industrial & Tourism Development Corporation Limited (hereinafter called “management”) under Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter called “ID Act”). Upon notice, the workers’ union appeared through its representative. Statement of claim was filed. Case of the worker’s union in brief is that the workman is a regular member of the workers’ union. He has been working in Chandigarh Industrial & Tourism Development Corporation (hereinafter called “CITCO”) since 17.05.1990 as a permanent employee of the CITCO. He was issued memorandum No. P&A/P-I/23372, dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the Corporation by showing lesser amount of booking and thus have caused financial loss to Corporation and siphoned the amount as well as hampering of the working of DVR system. At the time of issuance of memorandum the workman was working as Clerk at Chef-17, CITCO, Chandigarh. Before issuing memorandum, the workman was placed under suspension *vide* letter dated 16.12.2014. The workman replied the memorandum *vide* letter dated 30.01.2015 and denied the alleged charges and made his position clear *viz a viz* the alleged charges. The charge sheet was not based on facts. The alleged charges were based on the compliant of one Shri Akhilesh Chander–Sub Editor, Indian Police Action (National Monthly Magazine). He had made a complaint after one week of check-out as Receptionist refused to keep his bags after his checking out from lodge. He did not make any complaint against the working of the transit lodge during his stay in the lodge, which clearly shows the motivation of the complainant. In the complaint Shri Akhilesh Chander had showed his good and bad experience such as under :—

- i. In the lodge smoking is an offence but the drinking is allowed.
- ii. In the bath room there is no stool because of that person can slip over there.
- iii. You have near about twenty beds in hall, but the mobile charging points are two or three. Every person has mobile today and he has to charge.

After receiving the compliant from Shri Akhilesh Chander, on 15.12.2014, the Managing Director directed Shri Rajneesh Dewan – Senior Manager (Finance) to inspect the Transit Lodge. Sh. Rajneesh Diwan inspected the Transit lodge on the back of the workman. The Corporation did not inform the workman that his reply to the alleged charges is not found to be satisfactory. The corporation without any justified reason hastily appointed one Sh. R. L. Mehta–IAS (Retired) as Inquiry Officer to enquire in to the charges. The Corporation produced four state witnesses in the inquiry whereas the workman himself appeared in the inquiry. The Inquiry Officer Shri R. L. Mehta–IAS (Retired) was a biased person so the workman *vide* his letter dated 16.04.2015 and 30.04.2015 requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The Corporation *vides* its letter No. P&A/P-I/4086 dated 21.05.2015 informs the workman that his request for change of Inquiry Officer has been considered and not acceded to. No reason of rejection of appeal was given. The Corporation informed the workman *vide* letter No. P&A/A-I/206 dated 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officer. Sh. R.L. Mehta has joined service somewhere so he left the inquiry. In his place Shri H. R. Ganger–IAS (Retired) was appointed as Inquiry Officer. The Inquiry Officer Shri H. R. Ganger is a biased person. He has always proved the charge against the employees even by exceeding his jurisdiction. He has wrongly proved the alleged charges against the workman. The inquiry was full of defects on the grounds that no state witness had said anything on the alleged charges and no state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgments of Hon’ble High Courts and Supreme Court referred to by the workman during inquiry, which is otherwise criminal contempt of Court. The inspection by Shri Rajneesh Dewan – Senior Manager (Finance) was carried out on the back of the workman. The CCTC footage and copies of lesser amount of booking were not shown to the workman. The DVR system was working on 15.12.2014 and 16.12.2014. The workman was placed under suspension on 16.12.2014. The workman cannot be held responsible about the non working of DVR system after 17.12.2014. No State witness has stated that the workman had

siphoned the amount and had caused loss to Corporation, the workman had hampered the working of DVR system, allotment of beds to customers was the duty of the workman, the workman had not performed his duties in the interest of Corporation and no state witness has stated or produced any document to prove that the workman had worked fraudulently with dishonest intension and had concealed the facts from the department. The inquiry was not fair and proper and was full of defects. The punishing authority *vides* letter No. Persnl/EA-III/243 dated 23.12.2015 awarded the punishment of stoppage of two increments with cumulative effect upon the workman. The suspension period from 16.12.2014 to 29.05.2015 treated as leave of the kind due. The workman made an appeal dated 25.01.2016 before the appellant authority against the award of punishing authority. The appellant authority did not pass any speaking order and dismiss the appeal *vide* order No. P&A/P-I/27266 dated 10.03.2016. The punishment of stoppage of two increments with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 to be treated as leave of the kind due is illegal, wrongful, motivated, unjustified and against the principles of natural justice. Ultimately, it is prayed that office order No. P&A/P-I/415 dated 23.12.2015 of the Managing Director of the management *vide* which stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of the kind due be declared as illegal, wrongful and unjustified and office order No. P&A/P-I/415 dated 23.12.2015 be set aside.

3. The management contested the case of the workers' union and filed written statement raising preliminary objection that the workman while working as Junior Assistant at Transit Lodge (A Unit of CITCO), Sector 17, Bus Stand, Chandigarh indulged himself in a serious illegal activities detrimental to the interest of Corporation by showing lesser amount of booking and this have caused financial loss to the Corporation and siphoned the amount which otherwise should have been income of Corporation as well as tampering of the working of the DVR system as the hard disk attached to it was not found working at the time of retrieval of data, for which he was charge sheeted *vide* charge sheet dated 08.01.2015. The workman filed his reply to the charge sheet on 29.01.2015 which was considered and found unsatisfactory by the disciplinary authority. In order to ascertain the truth, Inquiry Officer Shri R. L. Mehta, IAS (Retired) was appointed on 16.02.2015 to enquire into the charges framed against the workman. Later on as per the order dated 29.07.2015 of Chandigarh Administration the name of Shri R. L. Mehta was deleted from the list of Inquiry Officers and as such the enquiry was withdrawn from him. After that Shri H. R. Gangar – IAS (Retired) was appointed as Inquiry Officer on 20.08.2015 who after conducting fair and proper inquiry into the matter giving full opportunity to the workman submitting his inquiry report on 06.10.2015 to the disciplinary authority wherein the Inquiry Officer came to the conclusion that the charge levelled against the workman are correct and proved. The disciplinary authority after going through the facts, record produced in the enquiry, issued show cause notice and also sent a copy of the inquiry report to the workman on 23.10.2015 for furnishing his reply. The workman submitted his reply on 05.11.2015 and he was also given opportunity of personal hearing on 11.12.2015 by the disciplinary authority. During personal hearing the workman was shown an office order dated 25.02.2009 by CITCO whereby the standing instructions had been issued to the effect that the charge of transit lodge was also be given to supervisor. The workman was also showed the copies of leave application signed and forwarded by him, on being questioned as to why he has signed/forwarded these documents to the head office, the workman could not give any satisfactory reply. The disciplinary authority after gone through the facts and circumstances of the case and submission made by the workman awarded the punishment of stoppage to two increments with cumulative effect and suspension period from 16.12.2014 to 29.05.2015 be treated as leave of kind due. The action of the disciplinary authority in awarding punishment is legal, just, fair and proper and in accordance with the law/rules applicable to the employees of the Corporation. No principle of natural justice has been violated. The workman aggrieved by the order dated 23.12.2015 filed an appeal on 25.01.2016 before the appellate authority. The appellate authority after going through the appeal, relevant documents, submission made by the workman during his personal hearing on 23.02.2016 and applying his mind came to the conclusion that the appeal filed by the workman is devoid of merits and deserves to be dismissed. Accordingly the appeal of the workman was dismissed. The action of the appellate authority while dismissing the appeal is legal, just, fair and proper and in accordance with law/rules. On merits, it is pleaded that the workman was issued charge sheet on 08.01.2015. The workman had filed reply to the charge sheet on 30.01.2015. The management had conducted the inquiry. The workman had written a letter for the change of the

Inquiry Officer and the management had replied the same on 21.05.2015 and informed him about the decision. The workman had filed an appeal before the appellate authority and the appellate authority had dismissed the appeal on 10.03.2016. Ultimately, it is prayed that the claim of the workers' union be dismissed.

4. The workers' union filed replication reiterating the averments of its case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the demand raised in the demand notice dated 20.01.2017 by the workers' union is genuine & justified, if so, to what effect and to what relief the workers' union / workman are entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workers' union examined the workman as AW1. Learned representative for the workers' union closed the evidence. On the other hand, the management examined Smt. Rajinder Kaur—Junior Bill Assistant (P&A Branch) as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 :

7. Onus to prove this issue was on the workers' union and in order to prove this issue the workers' union examined the workman as AW1, who deposed that the Hotel Workers Union, Chandigarh is registered trade union and he is regular member of the union. He has been working in the CITCO since 17.05.1990 as permanent employee of the CITCO. He was issued memorandum dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and has caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. He was working as Clerk at Chef-17 and before issuing charge sheet he was placed under suspension *vide* order No.Persnl/EA-III/204 dated 16.12.2014. He replied the memorandum dated 30.01.2015 and denied the alleged charges. The charge sheet was not based on facts rather on complaints of Shri Akhilesh Chander—Sub-Editor, Indian Police Action (National Monthly Magazine). After receiving the complaint the Managing Director directed Shri Rajesh Dhiman – Senior Manager to inspect the transit lodge. He was not associated in the inspection. The corporation without any justified reason appointed the Inquiry Officer Shri R. L. Mehta – IAS (Retired) to enquire into the charges and corporation produced four witnesses in the inquiry. He further deposed that he requested the Managing Director to change the Inquiry Officer but the Inquiry Officer was not changed. The corporation informed him on 14.08.2015 that the name of Shri R. L. Mehta has been deleted from the list of Inquiry Officers as he had joined the services somewhere and in his place Shri H. R. Ganger—IAS (Retired) was appointed as Inquiry Officer, who is biased person. He further deposed that the inquiry is full of defects as no state witness had said anything on the alleged charge. No state witness has corroborated the statements of others. The Inquiry Officer has not appreciated the judgements of Hon'ble High Court and Supreme Court referred by him. The inspection by Shri Rajneesh Dewan—Senior Manager (Finance) was carried out on his back. The CCTV footage and copies of lesser amount of booking were not shown to him. DVR system was working on 15.12.2016 and 16.12.2014. He was placed under suspension on 16.12.2014. No witness has stated that he had siphoned the amount and caused loss to the corporation and hampered the working of DVR system. Further, no witness has stated that allotment of beds to customer was his duty and had not performed his duties in the interest of corporation. No witness has been produced to prove that he had fraudulently with dishonest intension and had concealed the facts. The inquiry was not fair & proper

and was full of defects and punishment order of stoppage of two increments with cumulative effect is wrong and illegal. He made an appeal before the appellate authority. The appellate authority also did not pass any speaking order and dismissed the appeal.

8. Learned representative for the workers' union has argued that the workman is a regular member of the union and was working as Restaurant Executive. He has been falsely charge sheeted. The charge sheet is not based on facts. The Inquiry Officer has conducted the biased inquiry and wrongly proved the charges against him. There is no evidence on file to prove the charges against him. The inquiry is full of defects. The workman was placed under suspension on 16.12.2014 and DVS system was working on 15.12.2014 and 16.12.2014. He argued that the punishment of stoppage of two increments with cumulative effect and treating the suspension period from 16.12.2014 to 29.05.2015 as leave of kind due is illegal, wrong, motivated, unjustified and against the principles of natural justice. He prayed for allowing of the reference and for setting aside the punishment orders.

9. On the other hand, learned representative for the management has examined Smt. Rajinder Kaur – Junior Bill Assistant, P&A Branch as MW1 Senior Assistant, who proved the authority letter as Exhibit 'R1' and deposed that reference raised by the claimant is not maintainable. The workman while working as Restaurant Executive indulged himself in serious illegal activities. A complaint was received on email from one Shri Akhilesh Chandra in which the irregularities were pointed out and the Senior Manager gave his report that CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly. Inspection report is Exhibit 'R2' to 'R3'. As per report of the officials of Cyber Soft on 17.12.2014 the DVR system was not found in working condition and the workman was found on duty who knowingly in order to avoid the copying of recording had hampered the DVR system. The workman was charge sheeted for showing lesser booking as well as hampering the working of DVR system. Copy of charge sheet is Exhibit 'R6' and copy of inquiry report is Exhibit 'R7' and copy of punishing order is Exhibit 'R8'. The appellate authority also dismissed the appeal of the workman. Copy of the appellate authority is Exhibit 'R9'.

10. Learned representative for the management has argued that the workman while working at Transit Lodge, Bus Stand, Sector 17, Chandigarh indulged himself in serious illegal activities detrimental to the interest of the corporation by showing less amount of booking as well as hampering the working of DVR system for which he was charge sheeted. His reply to the charge sheet was considered and found unsatisfactory as such to enquire into the charges, a departmental inquiry was ordered against the workman, wherein the charges were duly proved against the workman. Thereafter he was served with a show cause notice and copy of inquiry report was sent to the workman for making representation thereto. The workman was also given opportunity of personal hearing. The disciplinary authority after going into the facts & circumstances of the case awarded punishment of stoppage of two increments with cumulative effect and treated his suspension period as leave of kind due. He prayed for dismissal of the reference.

11. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere disputed that the workman was working with the CITCO since 17.05.1990. It is also not disputed that he was issued memorandum No. P&A/P-I/23372 dated 08.01.2015 on the charge of alleged to have indulged in illegal activities detrimental to the interest of the corporation by showing lesser amount of booking and caused financial loss to the corporation and siphoned the amount as well as hampering of the working of DVR system. Now the grudge of the workman is that the charge sheet was not based on facts and only on the complaint of Shri Akhilesh Chander–Sub-Editor but as per the averments of the management that a complaint dated 13.12.2014 was received in the office of Managing Director, CITCO from Shri Akhilesh Chandra pointing out irregularities going on in Transit Lodge (A unit of CITCO), Sector 17, Bus Stand, Chandigarh. In order to ascertain the facts of the complaint, Senior Manager (Finance) was directed to carry out inspection, who gave his report on 15.12.2014 by stating that the CCTV footage from 07.12.2014 to 14.12.2014 has been checked randomly and found that on 08.12.2014 as per arrival register, the occupancy

was shown lesser than the occupancy as per CCTV footage. The CITCO is also got the DVR system and hard driver checked from the Cybersoft, Chandigarh and the report was given that the CCTV footage and back up video clips of certain period could not be copied in USB drive in the absence of password and certain device and it was also informed that the team on 16.12.2014 left the DVR in working condition but on 17.12.2014 when Shri Vikas along with the team came to transit lodge the DVR server cable was unplugged and when the DVR was put to use it was creating problem and was not functioning properly. As per evidence on record on 18.12.2014 a committee was constituted to procure the backup of CCTV footage of relevant data of transit lodge, the DVR system was non-functional. The system was got checked from M/s Dass Infotech, who opined that the hard disk had crashed or had bad sectors. Later on hard disk was checked from SPIC and it was reported that the hard disk attached to DVR was not in working condition. As per attendance register the workman had performed his duty on 16.12.2014. From the above it is clear that the workman had indulged in tampering the working of the DVR system knowingly in order to avoid copying of recording. The workman was charge sheeted and he filed reply on 30.01.2015. His reply was found unsatisfactory. This fact was admitted by the workman in his cross-examination before this Court that it is correct that he was charge sheeted on 29.01.2015 and he filed reply of the said charge sheet. He further admitted that it is also correct that he joined the inquiry and he also engaged defence assistant to assist him in the inquiry. He admitted that it is correct that show cause notice was issued to him on 23.10.2015 along with copy of inquiry report to which he replied and he was punished after considering the reply by the punishing authority. He stated that he made an appeal against the order of punishment authority to the appellate authority his appeal was dismissed and he was given personal hearing on 23.02.2015 by the appellate authority before deciding the appeal. In this manner the workman had admitted whole case of the management and clearly admitted that he has been given opportunity of personal hearing by the punishment authority before awarding the punishment. The management had already proved on record complaint of Shri Akhilesh Chandra received *vide* email dated 13.12.2014 Exhibit 'R2'; inspection report of the transit lodge by the Senior Manager (Finance) Exhibit 'R3'; report regarding DVR system by M/s Cybersoft Exhibit 'R4', report of the Society for Promotion of Information Technology (SPIC) regarding DVR system Exhibit 'R5'; memorandum whereby the workman was charge sheeted Exhibit 'R6'; inquiry report Exhibit 'R7'; punishment order passed against the workman Exhibit 'R8' and order of the appellate authority Exhibit 'R9'. As per inquiry file Shri R. L. Mehta was appointed as Inquiry Officer and Shri Raman Kumar-Manager (Sales Depot) was appointed as Presenting Officer. From the oral as well as the documentary evidence led by the parties, it has proved on record that a fair & proper inquiry has been held by the management before passing the punishment order. Accordingly, this issue is decided against the workers' union.

RELIEF :

12. In the light of findings on the issue above, this reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

Dated : 30.01.2020.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9746-HII(2)-2020/4860.—In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 37/2019, dated 08.02.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

RAM BALI RAVI DASS, HOUSE NO. 371, KACHI COLONY, CHANDIGARH (Workman)

AND

SACRED HEART CONVENT, SECTOR 26, CHANDIGARH THROUGH ITS MANAGING DIRECTOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in nutshell is that he was appointed as Driver with the management in August 2008. On 03.07.2018, the management refused work to the workman without issuing any notice in violation of provisions of Section 25-F of the ID Act.

3. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

"In view of the notification as well as latest citation of the Hon'ble High Court, I may kindly be allowed to withdraw the present industrial dispute with the liberty to file a fresh one before the Hon'ble Education Tribunal, Union Territory Chandigarh."

Accordingly, the present industrial dispute is disposed off as withdrawn with a liberty to file a fresh before the Education Tribunal, Union Territory Chandigarh. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.

UID No. PB 0095.

The 08.02.2020.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 19th March, 2020

No. 13/1/9745-HII(2)-2020/4856.—In exercise of the powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 72/2016, dated 29.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

SANDEEP SHARMA, S/O SHRI DEVINDER MOHAN, R/O VILLAGE MAULI BAIDWAN, SECTOR 80, MOHALI (Workman).

AND

1. GROZ BECKERT ASIA PRIVATE LIMITED, REGD. OFFICE 133-135, INDUSTRIAL AREA, CHANDIGARH THROUGH ITS FACTORY MANAGER.

2. FACTORY MANAGER, GROZ BECKERT ASIA PRIVATE LIMITED, REGD. OFFICE 133-135, INDUSTRIAL AREA, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed on compassionate ground after death his mother on 16.08.2010 as Technician in Category - I and since then he had been working with diligence and devotion throughout and was never found wanting in the performance of his duties. After considering his overall good performance his services were regularized with effect from 16.08.2011. He was illegally charge-sheeted as per charge sheet dated 26.09.2015 on the false allegations of habitual absenteeism which allegations are factually incorrect. The workman replied to the charge-sheet and submitted that regarding absence in the year 2013-14 he was earlier charge-sheeted on 04.01.2014 and workman had replied to the same on 06.01.2014 by submitting that absence was not intentional and willful but due to the sickness i.e. back pain which he suffered due to the stress and strain at workplace. In support of his submission he had also submitted medical certificate issued by the Doctor. After perusal of the reply and medical certificates, charge-sheet dated 04.01.2014 was dropped and workman was exonerated. Similarly again the workman was forced to take leave in 2014 due to sudden illness of his son as well as due to the sickness of workman himself. There was no one to look after his son and it was moral and legal duty of workman to be present with his son during his treatment. Absence was not intentional and willful but due to the circumstances beyond the control of the workman. The workman was issued charge-sheet in this respect on 01.07.2014 which was duly replied on 04.07.2014 supported by treatment record of son of the workman as well as that of workman himself. After considering the reply of workman that charge sheet was also dropped as per order dated 04.07.2014 and the workman was exonerated. As regard allegation of absent period in the year 2015 it is submitted that the same was also not intentional & willful but due to the sudden sickness of wife of the workman as well as due to self sickness. The workman had submitted complete treatment record of himself as well as his wife so the absence was not willful & intentional but due to the reasons which were beyond his control. Not satisfied with the reply of workman regular inquiry was ordered to be conducted. The Inquiry Officer did not conduct the inquiry as per rules and law of natural justice. The workman was not given assistance of co-worker. No presenting Officer was appointed and the Inquiry Officer acted as judge as well as prosecutor which is in violation of law of natural justice. He had requested to take the services of Advocate during the inquiry but request of the workman was

rejected without any reasons. Though there was no material on record, Inquiry Officer submitted inquiry report against the workman without appreciating the defense of the workman. The workman after receiving copy of inquiry report made a detailed representation but punishing authority without appreciating the defense of workman dismissed him from service as per order dated 04.02.2016. The charge-sheets, inquiry proceedings as well as punishment order dated 04.02.2016 are illegal and law of natural justice and deserves to be set-aside on the grounds that entire proceedings are illegal and against the law. The charges against the workman are misconceived and absence was not intentional and willful but due to illness of workman as well illness of his son and his wife which facts were duly supported by medical record as submitted by workman to the management from time to time. Mere absence does not amount misconduct but it becomes misconduct only when same absence is proved to be willful and intentional. There is no finding of Inquiry Officer that the absence was intentional and willful. The Inquiry Officer as well as punishing authority ignored the medical record as submitted by workman without any evidence brought on record by the management to disprove the same. Medical certificates are *per se* admissible and is the expert opinion and same cannot be rejected unless and until same is falsified by another medical evidence. No fair and proper inquiry proceedings were conducted by inquiry officer against the workman. No Presenting Officer was appointed and appeared in inquiry proceedings and Inquiry Officer acted as judge as well as prosecutor which act is in violation of law of natural justice. The inquiry report as well as punishment order are perverse and not based on any evidence on record. Defense of workman has not been considered at all. Entire proceedings are biased and the workman has been dismissed for some ulterior motive. In the factory staff became surplus and management floated VRS Scheme to lower down the strength of the workers. The workman was asked time and again to submit his application for VRS but he refused for the same as he has already become overage to seek employment elsewhere and he will come on the road for the rest of his life and he would not be in a position to earn anything to support his family being to only earning member in the family. So the management had chosen this method to oust the workman from service as such action of the management is biased and amounts to un-fair Labour practice. The punishment is too harsh for the alleged misconduct. The workman is at the prima age of his life and he has to shoulder responsibilities of his family which is entirely dependent upon him. The workman have no any other source of income except this job which he has got on compassionate ground after death of his mother. Ultimately, it is prayed that order of dismissal be set aside and the workman be reinstated with continuity of service and full back wages alongwith interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the workman was appointed on 16.08.2010 as Technician and was regularized with effect from 16.08.2011. He was charge sheeted *vide* charge sheet dated 29.09.2015 on the ground of habitual absenteeism, which is a major misconduct as provided under the Certified Standing Orders of the company. The domestic inquiry was ordered to be instituted into the charges against the workman. The workman concerned has been found guilty of the charges by the Inquiry Officer. The workman concerned submitted his reply dated 26.09.2015 to the charge sheet and also submitted his explanation with regard to his absence in the years 2013 and 2014 wherein he voluntarily admitted the charge of remaining absent from duty without any intimation and prior sanction of leave and requested for lenient view for his willful absence from duty. The management took a lenient view in the matter and warned the workman to be careful in future and not to repeat such acts of misconduct in future failing which strict disciplinary action would be taken against him as per Certified Standing orders of the company. The workman concerned was charge sheeted *vide* charge sheet dated 04.07.2014 for remaining absent from duty without any intimation or prior sanction of leave, etc. The workman submitted his reply to the charge sheet wherein he assured that he would not repeat similar misconduct in future. The management warned him to be careful and not to repeat such misconduct subject to the condition that in case he again committed such misconduct, the management would be at liberty to reopen his case and take necessary action against him as per certified standing orders of the company. The workman despite repeated warnings again remained absent from duty without any intimation or sanction of leave for which he again tendered written apology *vide* his letter dated 30.07.2014 and the management another time had to take a lenient view in the matter and again warned the workman concerned to be careful in future *vide* letter dated 16.08.2014. The workman remained absent from duty in an unauthorized manner i.e. without any intimation or prior sanction of leave from the competent authority. The whole conduct of the workman amounts to habitual absence from duty

unauthorized. The workman concerned was habitual in remaining absent from duty on various occasions in the past without any intimation and prior sanction of leave from the competent authority for which he was charge-sheets and let off with the warning by taking a lenient view but the workman failed to show any improvement and mend his ways and continued remaining absent from duty without any intimation or prior sanction of leave. After having found his explanation to the charge sheet dated 26.09.2015 un-satisfactory, domestic inquiry was instituted to enquire into the imputation of misconduct against the workman. The Inquiry officer conducted a fair and proper enquiry and gave full opportunity to the workman concerned to defend his side. The principles of natural justice were fully complied with. Shri Mandeep Singh Chahal was appointed as the management's representative *vide* letter dated 05.10.2015 addressed to the Inquiry Officer with a copy of Shri Mandeep Singh Chahal and Shri Sandeep Sharma, workman concerned. Shri Mandeep Singh Chahal used to represent the management during inquiry proceedings from time to time. The request of the workman concerned to be represented by an Advocate during inquiry proceedings was declined by the Inquiry Officer as there was no provision in the certified standing orders of the company. The Inquiry Officer submitted his enquiry report which is duly based on evidence led by both the parties during inquiry proceedings before him. Before passing the dismissal order, the workman was issued a show cause notice and also was given opportunity of personal hearing by the disciplinary authority. The written comments so submitted by the workman to the findings of the Inquiry Officer were considered by the management along with the inquiry proceedings, findings of the Inquiry Officer, past record of the workman and the gravity of the misconduct so proved in the inquiry and thereafter, passed the dismissal order of the workman. The inquiry proceedings as well as dismissal order of the workman are legal, just, proper, justified and in accordance with the principles of natural justice as action of the management with law, just, proper & in accordance with law. Major misconduct of habitual absenteeism has been fully proved by the Inquiry Officer during the course of inquiry proceedings. The charge of willful absence from duty was duly proved during the course of enquiry proceedings. The management has given full opportunity to the workman concerned to prove his innocence by initiating inquiry proceedings. Due to written apology, the workman was let off with warning not to repeat such misconduct in future but the workman did not show any improvement at all and in the given circumstances, the management was constrained to take strict disciplinary action against him in order to maintain punctuality and discipline in the Company. Misconduct of habitual absenteeism is a major misconduct as provided and defined under the Certified Standing Orders of the company. The dismissal order has been passed against the workman in view of the gravity of charges so established and the findings of the Inquiry Officer. The procedure adopted is exactly as per the Certified Standing Orders of the Company. Once, it is proved beyond doubt that the workman remained absent from duty un-authorisedly and his habitual absence is without permission. The medical record was duly considered and discussed by the Inquiry Officer in his report and in view of the reasons explained in inquiry report the workman has not been given any benefit on this account. The workman during the course of enquiry proceedings gave in writing to the inquiry officer on 26.11.2015 that he did not want to take the assistance of any co-worker as he wants to defend his case of his own. The Inquiry Officer has rightly declined the request of the workman for engaging an advocate during inquiry in view of the provisions of the certified standing orders of the company. The VRS Scheme is a voluntary scheme and there is no compulsion on any employee to opt for it. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
- 1-A. Whether the domestic inquiry conducted by the management is illegal & is liable to be vitiated ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri A. S. Raikhy - Inquiry Officer as MW1. Learned representative for the management tendered into evidence some documents and closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 & 1-A :

7. Onus to prove both these issue was on the workman and to discharge the same learned representative for the workman has examined the workman as AW1, who deposed that he was appointed on compassionate ground after the death of his mother on 16.08.2010 as Technician and since then he had been working with diligence & devotion throughout. After considering his overall good performance his services were regularised on 16.08.2011. He was charge sheeted on 26.09.2015 on false allegations of habitual absenteeism. He filed reply to the charge sheet that earlier he was charge sheeted on 04.01.2014 and he had replied the same submitting that the absence was not intentional and wilful but due to sickness as such the charge sheet dated 04.01.2014 was dropped. Similarly he was forced to take leave in 2014 due to sudden illness of his son and he was charge sheeted on 01.07.2014 which was duly replied. After considering his reply, that charge sheet was also dropped. Absence period in the year 2015 was also not intentional & wilful but due to sudden sickness of his wife and himself. Not satisfied with his reply regular inquiry was ordered to be conducted. The Inquiry Officer did not conduct the inquiry as per rules & law of natural justice. The charges against himself was misconceived and his absence was not intentional & wilful. Entire proceedings are biased and he has been dismissed for ulterior motive.

8. Learned representative for the workman has argued that he was appointed as Technician Category-I on 16.08.2010 on compassionate ground after the death of his mother and due to his good performance his services were regularised. He argued that he was earlier charge sheet on 04.01.2014 and then on 26.09.2015 on the ground of habitual absenteeism with the same allegations that were levelled in the year 2013 & 2014. The charge sheet was duly replied and it is argued that no misconduct alleged to have been committed by the workman. There is no charge sheet against the workman and absence of the workman was wilful and intentional. The absence of the duty becomes misconduct only if the same is wilful and intentional. He has placed reliance on citation **Krushnakant B. Parmar Versus Union of India & Another, 2012(2) SCT 572; Harbans Singh Versus The Presiding Officer & Others, CWP No.11532 of 2013** decided on 04.12.2014 by Hon'ble Punjab & Haryana High Court; **Chhel Singh Versus M. G. B. Gramin Bank Pali & Others, 2015 AIR (SC) 598**. It is further argued that once for the alleging absence in the year 2013 & 2014 the workman was already punished so the same cannot be part of subsequent charge sheet and it shall amounts to punishing twice for the same misconduct. He has placed reliance on citations **Nand Kumar Verma Versus State of Jharkhand & Others, 2012(3) SCT 192 (SC); Kumar P. Versus State of Tamil Nadu**, Rep. by its Secretary to Government, Labour Employment Department, Chennai - 9 & Others, 2010(16) SCC 679 (Madras) and **Tejwant Singh Versus State of Punjab & Others, 2017(2) SCT 596 (P&H)**. The charges sheet is misconceived and no misconduct is made out. Further it is argued that the Inquiry Officer took on record Exhibit '2' to '16' and subsequently relied upon them for returning his findings against the workman without examining any witness and without seeking any opportunity of cross-examination to the workman. In support of this submission learned representative for the workman has place reliance on citations **L.I.C. of India & Another Versus Ram Pal Singh Bisen, 2010(4) SCC 491** and **M/s Nicks (India) Tools Versus Ram Surat, 2004(4) SCT 130 (SC)**. During the inquiry proceedings the workman requested the Inquiry Officer to summon the Doctor concerned. The Inquiry Officer is duty bound to summon the defence witness and he has placed reliance on citations **State of Punjab Versus Devinder Pal, 2001(4) SCT 408 (P&H); R. Shamanna Versus The State Bank of Mysore, Bangalore, 2003 ILR (Karnataka) 4467** and **Union of India & Others Versus Prakash Kumar Tandon, 2009(2) SCC 541**. Further the punishment of dismissal from service is disproportionate to the alleged conduct. He has placed reliance on citation **Rajasthan Tourism Development Corporation Limited & Another Versus Jai Raj Singh Chauhan, 2011(13) SCC 541** and **Raghubir Singh Versus General Manager, Haryana Roadways, Hissar, 2014(4) SCT 262 (SC)**. He prayed for setting aside the dismissal order and reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, learned representative for the management has examined Shri A. S. Raikhy - Inquiry Officer as MW1, who deposed that he was appointed as Inquiry Officer *vide* letter dated 05.10.2015. He sent a letter dated 09.10.2015 to the workman whereby he was intimated regarding holding of inquiry. The

proceedings were recorded in Hindi, list of witnesses and copies of documents on which the management relied upon were supplied to the workman. Sufficient opportunity was given to the workman. The management witnesses were examined in the presence of the workman but he did not cross-examine MW1 Shri Ajay Kumar Patyal and only cross-examined MW2 Shri Rajeev Arora. He further deposed that the workman moved an application Exhibit '18' to the management and copy endorsed to the Inquiry Officer. In the application the workman stated that as a part of his evidence he is submitting medical certificate, in case the company did not accept the medical certificate then the Doctors who had issued the medical certificate may be summoned. The workman requested that in case the company did not agree to the request then he may be allowed to engage his personal Advocate from outside. He deposed that it was made clear to the workman that producing witnesses in the inquiry in his support was his responsibility. On 17.12.2015 the workman refused to sign the proceedings although he had marked his presence in the beginning of the inquiry. Copy of the proceedings was sent to him under registered cover *vide* Exhibit '19'. The workman participated in the inquiry proceedings and did not wish to say anything in addition to what he has already submitted his application dated 17.12.2015 Exhibit 18. He submitted his report dated 23.01.2016 which bears his signatures. The original inquiry file is Exhibit 'MX1'.

10. Learned representative for the management has argued that the workman had already been dismissed from the service on 04.02.2016 for the proved major conduct of habitual absence without permission. He was also earlier charge sheet on 04.01.2014 then on 01.07.2014 he was again charge sheeted. The workman was warned again and again to be careful in future rather three times he has been warned. But he again absented from his duties as such domestic inquiry was conducted against the workman. The Inquiry Officer submitted his report inquiry providing the charges against the workman and there is wilful & intentional absence and further it is the duty of the workman to name the Security Guard to whom the medical certificate was given and to name the Shift Incharge to whom he had shown the medical certificate. He had not summoned the Security Guard. He has placed reliance on citations **Dunlop India Limited Versus Their Workmen; 1972 AIR SC 2326; DTC Versus Sardar Singh, (2004) 7 SCC 574; Shakuntala Devi Versus M/s Dynamic Fashion Private Limited & Others, 2019 LLR 616 (P&H); Chennai Metropolitan Water Supply & Sewerage Board & Others Versus T. T. Murali Babu, 2014(2) SCT 193 (SC); K. I. Varkey Versus Fact Limited, 1993 LLR 263 (Kerala); Anna Transport Corporation, Salem Versus Labour Court, Salem & Another, 1998 LLR 407 (Madras); Modern Food Industries (India) Limited Versus Second Industrial Tribunal, West Bengal & others, 2000 II LLJ 177 (Cal.) and State of Haryana & Another Versus Rattan Singh, 1977(2) SCC 491.** He prayed for dismissal of the present industrial dispute.

11. After giving my careful consideration to the rival contention of both the sides, I find that it is admitted case of the parties that the workman had joined the services of the management as Technician on 16.08.2010 and firstly he was charge sheet on 04.01.2014 for habitual absenteeism, which is Exhibit '9' of inquiry file in which he admitted his unauthorised absence and requested to be excused. He was strictly warned to be careful in future and not to repeat such act of misconduct. It is also nowhere disputed that the second charge sheet for major misconduct of habitual absence without permission was issued *vide* letter dated 01.07.2014 Exhibit '12' of inquiry file. The workman submitted his reply to the charge sheet Exhibit '13' assuring that he will not remain absent in future and again requested to be excused. Then the workman was warned not to repeat such act of absence. The workman again absented from duty for which the workman gave a letter dated 30.07.2014 Exhibit '15' of the inquiry file. He was again warned third time to be careful in future. He was advised to improve his attendance Exhibit '16' of the inquiry file but when he did not mend his ways the management had issued third charge sheet of major misconduct of habitual absence without permission as per Clause 23(II)(I) and (m) of the Certified Standing Orders of the Company. The workman submitted his explanation which was found unsatisfactory. Perusal of the inquiry file reveals that the workman refused to take the assistance of co-worker as mentioned in the inquiry proceedings 16.10.2015 29.10.2015 05.11.2015 and 26.11.2015. The workman also submitted a letter on 26.11.2015 that he did not want to take the assistance of any co-worker. The management representative was appointed *vide* Exhibit '2'. The Inquiry Officer gave his inquiry report and he was found habitual absence without permission. Copy of inquiry report was given to the workman for his comments *vide* Exhibit 'MX2'. The workman submitted his comments Exhibit 'MX3'. Thereafter show cause notice Exhibit 'MX4' was issued to the workman and reply to the show

cause notice Exhibit 'MX5' filed by the workman and finally he was dismissed from services *vide* Exhibit 'MX6'. Learned representative for the management also placed on record Certified Standing Orders of the company Exhibit 'M1' and documents Exhibit 'MX1' to 'MX4' *vide* which full & final dues of the workman has already been paid. Further the learned representative for the management referred to cross-examination of AW1 in which he already admitted all the inquiry proceedings and admitted with regard to his earlier charge sheets and also admitted that he has been given full opportunity of hearing. Relevant extract of the cross-examination of workman is as under :—

"It is correct that I was charge sheeted *vide* charge sheet dated 26.09.2015 and I submitted my reply to the charge sheet *vide* letter dated 28.09.2015. It is correct that Shri A.S. Raikhy was appointed as the Inquiry Officer to conduct the inquiry into the said charge sheet. It is correct that I appeared before the inquiry officer on 16.10.2015 without co-worker. I have seen the original inquiry already placed on court file and I admit my signatures of it which is now Exhibit as MX1 containing pages 1 to 73. It is correct that I was advised by the inquiry officer on 16.10.2015 to bring your co-worker but I did not want to get the inquiry conducted, the inquiry officer advised me to participate in the inquiry and bring my co-workers. It is correct that on 29.10.2015 I reiterated that I will not like to inquiry conduct, but the inquiry officer against advised me to participate in the inquiry and bring the co-workers. On this date it was also said by the inquiry officer that in case I did not participate in the inquiry I will be proceeded against *ex parte*. It is correct on 15.11.2015 I appeared before the inquiry officer and stated that I will participate in the inquiry proceedings and sought adjournment. The inquiry officer accepted my request. It is correct that on 26.11.2015 I appeared before the inquiry officer and submitted letter dated 26.11.2015 stating therein I will not take the assistance of any co-workers and will defend my case of my own. Upon asking by the inquiry officer I stated that my decision is final. It is correct that thereafter on 26.11.2015 the copies of the documents on which the management relied upon and list of witnesses were supplied to me. It is correct that the statement of Shri Ajay Kumar Patial and Shri Rajvi Arora were recorded in my presence on 03.12.2015. It is correct that I did not cross-examine Shri Ajay Kumar Patial. I cross-examined only Shri Rajiv Arora. It is correct that on 12.12.2015 it was clarify by the inquiry officer that it was my duty to bring my witness myself and the inquiry officer had no power to summon the witness. It was also clarify that advocate could not be allowed to take part in the inquiry proceedings as per the certified standing orders of the company. It is correct that on 29.12.2015 I appeared before the inquiry officer and made a statement that I did not want to say any thing more then what I had stated in my letter dated 17.12.2015. On 29.12.2015 I was also cross-examined by the management representative. It is correct that on 29.12.2015 the inquiry was concluded and both the parties were advised to submit their written arguments, if any. It is correct that I do not submit any written arguments. It is correct that the inquiry officer found me guilty of the charges as contained in the charge sheet dated 26.09.2015. It is correct that I received the copy of the inquiry report on 25.01.2016 *vide* Exhibit MX-2. I submitted my reply to the inquiry report *vide* my letter dated 27.01.2016 the same is Exhibit MX-3. It is correct that thereafter a show cause notice dated 30.01.2016 was given to me on 30.01.2016 and the same is Exhibit MX-4. I submitted my reply to the show cause notice *vide* letter dated 01.02.2016 and the same is Exhibit MX-5. Thereafter I was dismissed from service *vide* letter dated 04.02.2016 and the same is Exhibit 'MX6'."

Meaning thereby it is crystal clear that a fair & proper inquiry has been conducted against the workman in accordance with the standing orders of the management and principles of natural justice. Reliance is placed on citation **G. R. Venkateshwara Reddy Versus Karnataka State Road Transport Corporation, Bangalore & Others; 1995(1) LLJ 1011 (Karnataka)** wherein it was held that the Inquiry Officer gave a reasoned and detailed report findings the workman guilty of charges as contained in the charge sheet so the inquiry as well as inquiry report is legal and faultless. Further reliance is placed on citation **M. L. Singla Versus Punjab National Bank Limited & Another, 2019 LLR 3 SC** wherein it was held that the workman participated in the inquiry proceedings. He was given full opportunity at every stage of the proceedings. No prejudice was

raised by the workman before the Inquiry Officer. The workman filed reply to the charge sheet and conducted cross-examination of the witness of the management such a detailed inquiry report indicating reasons to the findings cannot be faulted with the absence of any valid reason. Further Hon'ble Supreme Court of India in case **State Bank of Bikaner & Jaipur Versus Nemi Chand Nalwaya, 2011(4) SCC 584** held that when the inquiry against the workman was conducted in a fair & proper manner, the Court will not act as appellate court and reassess the evidence led in the domestic inquiry nor interfere on the ground that another view is possible on the material on record.

12. So far as the arguments of learned representative for the workman that earlier nothing was adverse against him does to inspire the confidence as admittedly the workman was earlier charge sheeted twice. He was issued three warnings for same major misconduct.

13. Another argument addressed by learned representative for the workman was that the workman was given minor punishment earlier and previous charge sheets were dropped. But, in fact, the workman was earlier charge sheeted for major misconduct *vide* Exhibit '9' and '12' of the inquiry file and the workman was also issued warnings *vide* Exhibit '11' under the Clause No. 23(III) (b) of the Certified Standing Orders of the management, which is punishment for major misconduct. So argument of the workman that he was given minor punishment and previous charges were dropped is baseless.

14. The next argument of the workman that the workman had already punished for his earlier misconduct is not correct. As per charge sheet Exhibit '5' of the inquiry file, he remained absent without any notice during for 15 days during the period January 2015 to September 2015. Hence, the present amounts to punish the workman twice for the same misconduct is false and rejected.

15. Another argument of the workman that there is no wilful and intentional absence so the same does not become misconduct, does not inspire the confidence of the Court as learned representative for the management had referred Section 5 of the Industrial Employment (Standing Orders) Act, 1946 and referred to page 5 of the Certified Standing Orders Exhibit 'M1', which is as under :—

"7. Leave of absence

- (a)
- (b) Any workman who desires to obtain leave of absence shall apply on prescribed Form "B" to the manager for the purpose, who may either deal with the matter personally or depute someone else in this behalf.
- (c) Applications for leave of absence for less than three day's duration must be made at least 24 hours previous to the time from which the leave is required except on medical grounds or death in the family in which case the application may be made the same day.
- (d) Applications for leave of absence for more than three day's duration of a non-urgent character shall be made atleast 7 days previous to the date from which the leave is required. If the leave required is more than 7 days, the provisions of section 79 of the factories Act pertaining to leave shall apply.
- (e)"

As such the workman had failed to show either before the Inquiry Officer or before this Court that he had applied for leave for the period of his unauthorised absence for 15 days during the period from January 2015 to 23rd September, 2015. Therefore, the habitual absence whether it is wilful or intentional has no relevance in terms of standing orders. The habitual absenteeism is a serious misconduct so it is well settled law that once the employee who remains on unauthorised absence from duty without any prior intimation to the employer, it is negligence and lack of interest in work and amounts to misconduct as held in citation **DTC Versus Sardar Singh (supra)**. Further reliance is placed on **State of Punjab Dr. P. S. Singla (supra)** in which it was held that where the employee who is un-authorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty. In citation **Shakuntla Devi Versus M/s Dynamic Fashion Private Limited & Others (supra)** it

was held that unauthorised absence is a serious and grave misconduct causing indiscipline at the workplace. Misconduct being grave and serious justifies punishment of termination. In citation **Chennai Metropolitan Water Supply & Sewerage Board & Others Versus T. TR. Murali Babu** (*supra*) it was held that dismissal from service due to absence from duty without intimation is not disproportionate. In citation **K.I. Varkey Versus Fact Limited** (*supra*) it was held that absence from duty without permission and without applying for leave is misconduct and dismissal is justified.

16. Further argument of learned representative for the workman that he had submitted medical certificate, also does not inspire confidence as the learned representative for the management has referred cross-examination the workman conducted during the inquiry proceedings, wherein he himself admitted that he did not submit leave application for his both the medical certificates of 19.08.2015 and 15.09.2015. Though he stated that his father gave medical certificate to the Security Guard at the gate and when he became fit he showed the medical certificate to the Shift Incharge but the workman had not examined these material witnesses i.e. Security Guard and Shift Incharge to prove his stand. So it is well settled law in case titled as **Modern Food Industries (India) Versus Second Industrial Tribunal, West Bengal & Others** (*supra*) that the technical rules of evidence and proof beyond reasonable doubt will not be applicable in domestic inquiry. Further learned representative for the management examined the Inquiry Officer as MW1, who has given his detailed report and findings to the effect that the workman had failed to prove the submission of medical certificate to the company.

17. Last argument of learned representative for the workman that the punishment was proportionate to the gravity of misconduct and the workman is entitled to get the benefit of Section 11-A of the ID Act is also does not carry any weight as no case of consideration under Section 11-A of the ID Act is made out as law is well settled in citation **Chennai Metropolitan Water Supply & Sewerage Board & Other** (*supra*) wherein it is held that an employee, who remained absent from duty without intimation to the employer, his dismissal in such circumstances was not disproportionate. In citation **Anna Transport Corporation, Salem Versus Labour Court, Salem & Another** (*supra*) held that Section 11-A of the ID Act is not meant to be equated to charity. That is not the object of Section 11-A. Petitioner was habitually absented from duty despite imposition of fines. The employer is not required to function as a charity organization. Every organization is established to render efficient service and fulfill the object for which it has set up. The penalty of dismissal from service is confirmed. In citation **Shakuntala Devi Versus M/s Dynamic Fashion Private Limited & Others** (*supra*) it was held that the workman was disobedient and habitual of remaining unauthorized absent from duty. Such misconduct is grave and serious causing indiscipline in the workshop. Inquiry was conducted and was held guilty of the charges. Punishment of termination of her services is not disproportionate.

18. In the light of discussion made above, it is held that a fair & proper inquiry has been conducted against the workman before terminating his services and inquiry conducted is not vitiated on any ground. Both these issues are decided against the workman and in favour of the management.

RELIEF :

19. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(ANSHUL BERRY),

Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

The 29.01.2020.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Sahil Verma, s/o Sh. Surinder Singh, r/o # 451, Village Kajheri, UT, Chandigarh, have changed my name and shall hereafter be known as Sahildeep Singh for all purposes.

[172—1]

I, Meena Rani, w/o Gurvinder Singh, # 43, Milk Colony, Dhanas, Chandigarh. I have changed my name from Meena Rani to Manjit Kaur.

[173—1]

I, Sangeeta, d/o Khem Chand, # 81, Vikas Nagar, Mouli Jagran, Chandigarh, in my Schedule Caste Certificate my father's name is mentioned as Khem Singh, is incorrect name, Correct name is Khem Chand.

[174—1]

I, Gurpreet Singh, s/o Hakam Singh, 1441, Nagla Mohalla, Manimajra, Chandigarh, have changed name to Gurpreet Singh Saroy.

[175—1]

I, Sanjay, s/o Chote Lal, r/o # 10, Sector 26, Chandigarh, have changed my name to Sanjay Kumar.

[176—1]

I, Punit Walia, s/o Sh. Daljit Singh Walia, r/o # 09, Sector 10, Chandigarh, have changed my name from Punit Walia to Punit Ahulwalia.

[177—1]

I, Sanjay Kumar Sharma, s/o Onkar Chand, r/o H. No. 2318/2, Sector 45-C, Chandigarh, have changed my name to Sanjay Sharma.

[178—1]

I, Shamlal, s/o Dev Raj, r/o # 1437/2, Sector 30-B, Chandigarh, have changed my name to Sham Lal.

[179—1]

I, Jaswant Parshad, s/o Janki Prasad, # 2066, New Indira Colony, Manimajra, Chandigarh, have changed my name to Jasantri Prasad.

[180—1]

I, Sheela Anil Thomas, r/o 2030/1, HIG Flat, Sector 47-C, Chandigarh, do hereby declare I have changed my name as Ackamma Anil Thomas.

[181—1]

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